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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,423	03/25/2005	Poul Henrik Ahm	1175/74130	4537

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EXAMINER

PALO, FRANCIS T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/529,423

Applicant(s)

AHM, POUL HENRIK

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 9, 13 and 14 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 7, 8, 10-12 and 15-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The title of the invention contains legal phraseology ("said"); "said" should be changed to --the-- or --seed--.

Claim Objections

The claims are objected to because they include reference characters, which are enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and recited in the claims are not afforded any patentable weight, as on their own in the claims they fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention, and as such, all reference characters enclosed within parentheses should be deleted from the claims.

Claims 1, 5, 7, 9 and 11-17 are objected to because of the following informalities:

Appropriate correction is required to the claim set submitted with the preliminary amendment filed 3/25/05.

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In general, the claims containing "characterized" should be changed to --characterized--

Regarding **claim-1**:

"which is flexible" should be changed to --is flexible--.

Regarding **claim-5**:

"a 10 sandwich" should be changed to --a sandwich--.

Regarding **claim-7**:

"areprovided" should be changed to --are provided--, and "projecting 5 inwards" should be changed to --projecting inwards--.

Regarding **claim-9**:

'characterized 10 in' should be changed to --characterized in--, and the claim lacks antecedent basis for the limitation "fibers"; should the claim depend from claim-5?

Regarding **claim-11**:

The instance of "20" should be deleted.

Regarding **claim-12**:

Should the claim dependency be changed to claim-1?

Regarding **claim-13**:

"that that" should be changed to --that--.

Regarding **claim-14**:

The claim lacks antecedent basis for "adjuvants"

Regarding **claim-15**:

The claim dependency should be reestablished.

Regarding **claim-16**:

The claim lacks antecedent basis for "SAP" and "sucked" should be changed to --absorbed--.

Regarding **claim-17**:

The recitation of "(30)" should be deleted, and there is no antecedent basis for the term "adjuvant", and the recited irrigation and bedding out process steps, which should be deleted from the product claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 7, 13, 14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding **claim-2**:

It is unclear what is meant by the limitation "PLA-fibers present a slightly creased structure", as claimed and as referenced in paragraphs [0011] and [0038] of the published '248A1 application; the claim cannot be examined on the merits.

Regarding **claim-7**:

It is unclear what is intended by 'I line weldings' and the claim lacks antecedent basis for "side edges".

Regarding **claims 13, 14 and 17**:

It is unclear what applicant is intending by the recitation 'paper-like pieces' (claim-13), and the claims lack antecedent basis for the limitation "adjuvants" which has been cancelled in claim-1; the claims cannot be examined on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6 and 9 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a), as obvious over **Scholl** (DE 195039710) 1996.

Regarding **claim-1**:

Scholl teaches a carrier (50) strip having delimited regions (21) containing seed (19) and a non-woven “viscose/cotton” layer (3) arranged on the carrier strip as claimed. The delimited regions (germinating units) would therefore include a mixture of cotton (from the “viscose/cotton” layer (3)), the cotton readable as a carrier, and seed as claimed; the inclusion of at least one additive to the mixture is not readily apparent from the abstract of Scholl.

As the inclusion of chemical additives in seed tapes is well known in the art, as evidenced by Weston '618 and Wood '879; it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have included at least one water absorbing additive in the form of fertilizer in the carrier/seed mixture of Scholl, for the known advantages of that feature, as further such modification would not destroy the invention of Scholl.

Regarding **claim-2**:

The discussion above regarding claim-1 is relied upon.

As can best be determined by the claim language, the viscose/cotton layer of Scholl is capable of presenting a slightly creased structure, as claimed.

Regarding **claims 3 and 6**:

The discussion above regarding claim-1 is relied upon.

Scholl teaches cotton in the biodegradable layer which is readable as super absorbing fibers as claimed, and the cotton fibers would be capable of the proximity to the seed as claimed.

Scholl teaches the viscose layer is compacted by pressure and needle punched; ultrasonic or heat treatment as claimed, is not readily apparent from the abstract of Scholl.

In the absence of any stated problems solved by or any advantage obtained by ultrasonic or heat treatment (claim-3) or being glued (claim-6) as claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have retained the cotton fibers as claimed, as further such modification is merely an alternate equivalent means for fixing the cotton fibers about the seed, as claimed.

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Regarding **claim-9**:

The discussion above regarding claim-1 is relied upon.

Since the seed mat of Scholl utilizes the viscous as claimed for the non-woven layer; the layer of Scholl therefore is capable of the fiber lengths as claimed.

Allowable Subject Matter

Claims 4, 5, 7, 8, 10-12 and 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3 and 6 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over **claims 1 and 3** of U.S. Patent No.

6,701,664 B2.

Regarding **claim-1**:

Although the conflicting claims are not identical, they are not patentably distinct from each other because the **'at least one carrier strip as well as at least one layer of biodegradable, gas-permeable material which is flexible and non-woven and arranged on said carrier strip'** as recited in the instant independent claim, is considered as encompassed by the broader recitation of the conflicting independent claim-1 wherein, **'at least two paper layers'** and **'the additives and the carrier are adhered to one air-permeable paper layer by means of a layer of adhesive on the inner face of said paper layer'** is recited.

Further, the mixture of carrier, at least one additive (water absorbing) and seeds as claimed, is recited in the conflicting claim-1.

Finally, the PLA or alternatives as claimed are encompassed by the conflicting '664 claim-1 recitation of 'layer of adhesive'.

Regarding **claim-3**:

The embedded product by process limitation in the product claim is usually not afforded any patentable weight ('**by means of an adhesive effect resulting from.....**'), however, the conflicting '664 claim-3 recites 'the adhesive layer is activated by means of pressure, ultrasound or heat'

Regarding **claim-6**:

The conflicting '664 claim-1 recites 'a layer of adhesive on the inner face of said paper layer'.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gaudreault '011 teaches a sheet of paper coated with a layer of polylactide.

Ishioka '011 teaches a sheet of paper coated with a layer of nonionic water-absorbing polymer having seeds thereon.

Fischer '927 teaches an apertured seed tape.

Weston '618 teaches a seed tape having fertilizer and insect control material therein.

Wood '879 teaches a seed tape having a fertilizer or other chemical additive patch therein.

Ogilvy '925 teaches a seed tape.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644